

PUBLIC CONTRACTS REVIEW BOARD

Case No. 531

LCA/01/2013

Tender for the provision of research and consultancy for the selective collection of the organic waste in tourist areas and valorisation in farm composting plants (SCOW)

This call for tender was published on the 1st February 2013 with a closing dated of the 4th March 2013. The estimated value of this tender amounted to €55,000 inclusive of VAT.

Two tenderers submitted a quote following this call.

Mr Lawrence Attard filed a letter of objection on the 4th April 2013 against the decision of the Local Councils' Association to recommend the award of the tender to AIS Environmental Ltd.

The Public Contracts Review Board composed of Mr Joseph Croker as Acting Chairman with Messrs Carmel Esposito and Paul Mifsud as members convened a public hearing on the 25th April 2013 to discuss this complaint.

Present for the meeting were:

Mr Lawrence Attard

Dr Philip Manduca	Legal Representative
Mr Lawrence Attard	Appellant

AIS Environmental Ltd

Mr Mario Schembri	Engineer
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Local Councils Association (LCA)

Dr Mark Sant	President
Mr Jimmy Magro	Secretary
Ms Lara Schranz	Project Co-ordinator

After the A/Chairman's brief introduction, the appellant was invited to explain the motives of his objection.

Dr Philip Manduca, on behalf of Mr Lawrence Attard, the appellant, made the following submissions:

- i. by email dated 1st April 2013 his client was informed that his offer was not successful;
- ii. on going through the evaluation report, particularly the evaluation grid at section 2.5, it was evident that his client was found technically compliant as he obtained 5 points or more in all ten categories totalling a score of 71 out of 100 points;
- iii. moreover, the price of €13.95 per hour offered by his client was substantially cheaper than the recommended offer of €17.70;
- iv. government invariably recommended the practice that whenever bids were technically compliant then the deciding factor ought to be the price;
- v. one had to keep in mind that certain criteria were rather subjective and therefore one could question the allocation of marks in their respect and that was why one had to give more weight to objective criteria such as the price; and
- vi. given that his client's offer was both technically compliant and substantially cheaper than it was being submitted that the tender ought to be awarded to Mr Lawrence Attard.

The A/Chairman PCRБ asked whether the tender document provided for this tender to be adjudicated on the basis of the cheapest compliant offer or on the basis of the most economically advantageous tender (MEAT) as provided for in the procurement regulations. He added that if this tender was to be awarded on the basis of MEAT, then the tender document should have included the evaluation grid displaying the various criteria, the allocation of points to each criterion and the weighting given to each aspect, e.g. experience and qualifications.

Mr Jimmy Magro, executive secretary of the Local Councils Association, explained that:-

- a. the tender document did not indicate whether this tender was going to be adjudicated on the basis of the cheapest compliant offer or on the basis of the most economically advantageous tender (MEAT);
- b. the tender document was a standard one and the LCA made use of it on various other occasions;

- c. for example, with regard to qualifications requested in clause 6 (a), that is, to be in possession of Environmental/Agriculture Engineer and have knowledge and experience on biomass composting plants, the evaluation board found that the recommended tenderer provided what was requested whereas the appellant did not as per respective tenderer's profile;
- d. this tender concerned the setting up of a biomass composting plant and therefore one had to possess experience in the various stages of the supply chain of the bio composting plant; and
- e. with regard to clause 6 (b), concrete experience in the thematic aspect of the project, the recommended tender had demonstrated that he had much more experience than the appellant.

Mr Lawrence Attard, the appellant, explained that:-

- i. with the tender submission he had provided his personal experience and that of Mr Peter Calamatta, who was well known for his extensive experience in the agricultural and environmental sectors;
- ii. the contracting authority did not specify the academic qualification/s that the bidder had to provide, i.e. which warrant/s would satisfy this requirement;
- iii. the LCA had already awarded three contracts where the tender conditions and specifications were practically identical to the tender under review and in all three cases the award was made in favour of the cheapest compliant bidder;
- iv. it was not acceptable for the evaluation board to opt for MEAT during the evaluation process when that was not laid down in the tender document; and
- v. from the evaluation report it emerged that his bid qualified in all respects and was even the cheaper offer.

Mr Magro remarked that:-

- a. part of this contract involved the carrying out of an environmental impact assessment and other such studies together with the filing of development application/s with the Malta Environment and Planning Authority (MEPA), and therefore qualifications and practical experience were required to follow this process;
- b. with regard to criteria (a) and (b) the appellant was given 5 out of 10 points because he had carried out limited related works but on the other hand the recommended bidder was allocated 9 out of 10 points because it was an established firm with considerable experience in the setting up of composting plants, of which there was one in Marsascala together with two other smaller ones; and
- c. the award criteria of such a tender should not be solely the price otherwise bidders would simply quote a price slightly lower than the offer accepted in the

previous tender in an effort to win the contract but that did not always provide the desired result.

The A/Chairman PCRB remarked that:-

- i. it would appear that there were reasons behind the conclusions arrived at by evaluation board however it was evident that the methodology used, e.g. the evaluation grid laying out the various criteria and the maximum points allocated reflecting the weighting given to each of the criteria, was not published in the tender document;
- ii. the selection/award criteria had to be included in the tender document for the benefit of bidders and for the sake of transparency and
- iii. selection/award criteria should not be established during the adjudication process.

Mr Mario Schembri, obo AIS Environmental Ltd, the recommended bidder, argued that:-

- a. the term engineer as laid down in clause 6 (a) of the tender document definitely referred to an engineer who was in possession of the appropriate warrant issued by the state which in turn put onerous responsibilities on its holder;
- b. the tender was very clear in its requirements, e.g. the processing of waste generated by the tourism industry, and his firm had provided what was required backed by years of experience in this specific area; and
- c. he, himself, was a warranted engineer however, Mr Peter Calamatta was not a warranted engineer as requested in the tender document even though he was undoubtedly an expert in horticulture and related fields.

The Board:

- having noted that Mr Lawrence Attard had lodged an appeal on the 4th April 2013 against the decision taken by the Local Government Association to award the tender to AIS Environmental Limited;
- having noted that the appellant's claim that since the tender was not clear as to the method of adjudication and as such one were to assume that the cheapest compliant offer method was to be used; that according to the adjudication report he (ie. the appellant) obtained 71 out of 100 points and as such was adjudicated as being compliant in all respects;
- having also noted that the Contracting Authority admitted that it had used a standard tender document which did not lay down the evaluation criteria; having also noted that in view of the particular complexity of the service required any tenderer would have to have considerable experience in the field;

- having also noted the preferred bidder's contention that his firm had the experience and technical background to provide the service;

came to the following conclusions:

1. That the tender document did not lay down the criteria to be used for adjudication purposes;
2. That had the Contracting Authority desired to use the MEAT principle (as it had the right to do) it should have included the appropriate grid in the tender document showing the particular specifications it required together with the weightings assigned to each criterion.

In view of the above the Board finds in favour of the appellant and recommends that the tender be re-issued using a tender template published by the Department of Contracts, laying down in a clear manner the specifications required and the method to be used for adjudication purposes.

Moreover, the Contracting Authority's attention is to be drawn to the fact that it has to adhere to the regulations laid down in the Public Procurement Regulations on the processes to be used throughout the whole tendering procedure, including the adjudication process.

The Board also recommends that the deposit paid by the appellant be reimbursed in full.

Joseph Croker
A/Chairman

Carmel Esposito
Member

Paul Mifsud
Member

29th April 2013